

REMARKS

Claims 1-19 are pending with this paper. Claims 1-19 are rejected by the Office Action. Applicant is amending claims 1-11 and 13-19. Applicant requests reconsideration of the claims based on at least the arguments herein.

Amendments

Applicant is amending claims 1-11, 13-15, and 18-19 to replace “television network” with “distribution network” and claims 6-7, 13-14, and 16-17 to replace “subscriber” with “end user.” The amendments are supported by the specification as originally filed, *e.g.*, page 5, lines 4-14. No new subject matter has been added.

Discussion of Matz

The Office Action depends on newly cited prior art US Publication No. 2009/10292703 (Matz). Matz discusses the measurements of content-access patterns so that content to subscribers can be created based on the content-access patterns and associated behaviors of subscribers. (Paragraph 0004.) Referring to fig. 1, merge processor 104 receives information from local-content database 106, national-content database 114, and subscriber-action database 112, where databases 106 and 114 contain data about delivered content but not the delivered content itself. (Paragraph 0045.) Subscriber-action database 112 indicates the actions performed by the subscriber, *e.g.*, tuning to a given channel or viewing an alternate data source (VCR or DVD). (Paragraph 0050.) If the subscriber was tuned to the given channel (channel 12), merge processor 104 identifies the national content at a given time from national-content database 114 and whether the cable provider pre-empted the national content (*e.g.*, a real-estate investment strategy video) based on information from local-content database 106. Consequently, merge processor 104 merely ascertains what the subscriber is tuned to. While multiple types of content may be provided during any period of time as illustrated in fig. 3A (paragraph 0060), the content provider (*e.g.*, cable provider) makes the determination of which content will be available via a communications channel (paragraph 0061). Merge processor 104 then stores the resultant data in database 128 for a collection of subscribers. (Paragraph 0046.) For example, the merged information in database 128 may track the popularity of a program for several thousand subscribers for an entire month.

Subscriber database 130 includes attributes about the collection of subscribers and information from database 128. (Paragraph 0047.) Analyzer 131 subsequently uses the information from subscriber database 130 to discern patterns so that specific programming and advertising packages can be developed. (Paragraph 0048.) Consequently, content distribution server 132 can distribute tailored content to subscriber's set-top box 124. (Paragraph 0049.)

Claim Rejections - 35 U.S.C. §103

Claims 18-19 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over US Publication No. 2004/0255333 (Kenworthy) in view of US Publication No. 2009/10292703 (Matz).

Regarding independent claim 18, Kenworthy and Matz, either individually or in combination, fail to suggest the feature of "responsive to determining that the locally produced programming is available and intended for local transmission, unconditionally preempting the backdrop programming and providing the locally produced programming on the channel." (Emphasis added.) The Office Action admits but alleges (Pages 3-4.):

On the other hand, Kenworthy does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content. However, in an analogous art, Matz teaches a merge processor (104, Fig. 1) at a cable headend (102, Fig. 1) that receives national content (114, 116 and 118, Fig. 1; [0042]) and local content (106, 108, 110; Fig. 1; [0041]) to determine which content will be available via a channel ([0061]). The merger (sic) processor determines if locally content is available (406, Fig. 4) and if it is available (insert the local programming or local advertisement (408, Fig. 4). If there is no local programming/advertising, National programming/advertising is inserted (412, Fig. 4). This can be seen in Fig. 3A where availability of the national and local programming/advertising at different times is shown ([0059]; [0060]). Fig. 3B shows what was actually presented to the user ([0067]). Following the flow chart on Fig. 4, it is easy to notice that local programming/advertising takes priority when it is available. The preemption of the local programming over national content is unconditional since the only 'condition' to present it is its availability (406, Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Kenworthy's invention with Matz's unconditionally preempting local content to content received from a national headend for the benefit of presenting and promoting locally produced content of general interest to population in a given region or zone.

While the Office Action admits that Kenworthy “does not explicitly teach the preempting of the backdrop programming is unconditional and that it is in response of the determination of the availability of the locally produced content,” Matz fails to remedy the deficiencies of Kenworthy. Referring to Matz, merge processor 104 ascertains what the subscriber 123 is viewing (national content, local content, or alternate data source) from subscriber-action database 112, national-content database 114, and local-content database 106. However, merge processor 104 does not insert any content that is sent to subscriber 123 from head-end 102 to set-top box 124. While different types of content may be provided during any period of time, the fact that it is provided does not indicate that it is on set-top box 124. (Paragraph 0060.) While multiple types of content may be provided during any period of time as illustrated in fig. 3A (paragraph 0060), the content provider (*e.g.*, cable provider) makes the determination of which content will be available via a communications channel (paragraph 0061). Consequently, based on the decision of the cable provider, the cable provider is able to select from one of numerous combinations of content types to subscriber 123 by tailoring content distributed by content distribution server 132. The actual selection is indicated by national-content database 114 and local-content database 106. To ascertain what is actually sent to set-top box 124, merge processor 104 must access national-content database 114 as well as local-content database 106 to ascertain whether the cable provider pre-empted the national content with the local content. (Paragraph 0045.) Consequently, because the cable provider is able to pre-empt national content, the cable provider has the ability to conditionally pre-empt national content to subscriber 123. Moreover, the Office Action alleges that the particular sequencing of steps in fig. 4 in Matz actually inserts the type of content to subscriber 123. However, the process in fig. 4 merely ascertains what type of content (alternate data source, national content, or local content) is actually presented to subscriber 123. However, only one type of content may be viewed by subscriber 123 at a given time, and consequently the analysis performed in fig. 4 will yield the same results if steps 406 and 410 were reversed.

Independent claim 19 includes the similar feature of “responsive to determining that the locally produced programming is available and intended for local transmission in a particular local area having the channel, unconditionally preempting the backdrop programming and providing the locally produced programming on the channel in the particular local area.”

Consequently, claim 19 is patentable for at least the above reasons. Applicant requests reconsideration of claims 18 and 19.

Claim Rejections - 35 U.S.C. §103

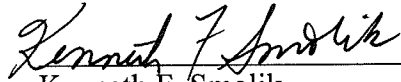
Claims 1-17 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Kenworthy in view of Matz in further view of US Publication No. 200610041921 (Hane).

Regarding claim 1, Kenworthy and Matz, fail to suggest the feature of “responsive to determining that the locally produced PEG programming is available and intended for local transmission, unconditionally preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel” for at least the reasons discussed above. Moreover, while Hane discusses remotely controlling an input source selection at a receiving device to provide for an integration of local and national broadcast signals, Hane does not remedy the deficiencies of Kenworthy and Matz. Independent claim 8 includes the similar feature of “responsive to determining that the locally produced PEG programming is available and intended for local transmission in a particular local area having the PEG channel, unconditionally preempting the backdrop programming and providing the locally produced PEG programming on the PEG channel in the particular local area.” Similarly, independent claim 15 includes the feature of “responsive to determining that the locally produced content is available and intended for local transmission, unconditionally preempting the backdrop programming and providing the locally produced content on the channel.” Moreover, claims 2-7, 9-14, and 16-17 ultimately depend from claims 1, 8, and 15, respectively, and are patentable for the above reasons as well as the additional recited features. Applicant thus requests reconsideration of claims 1-17.

All rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

Respectfully submitted,

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